

# **REPLY EXHIBIT**

## **11**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT                      Adv.Pro.No.  
SECURITIES LLC,    08-01789 (BRL)  
Debtor.

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,  
Plaintiff,    Adv.Pro.No.  
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION OF J. EZRA MERKIN,  
as reported by Nancy C. Bendish, Certified Court  
Reporter, RMR, CRR, and Notary Public of the  
State of New York, at the offices of Baker  
Hostetler, 45 Rockefeller Plaza, New York, New  
York, on Tuesday, February 24, 2015, commencing  
at 9:47 a.m.

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<p>1 APPEARANCES:</p> <p>2 BAKER HOSTETTLER, LLP</p> <p>3 45 Rockefeller Plaza</p> <p>4 New York, New York 10111</p> <p>5 BY: DAVID J. SHEEHAN, ESQ.</p> <p>6 BRIAN W. SONG, ESQ.</p> <p>7 For Irving H. Picard, Trustee</p> <p>8 DECHERT, LLP</p> <p>9 1095 Avenue of the Americas</p> <p>10 New York, New York 10036-6797</p> <p>11 BY: NEIL A. STEINER, ESQ.</p> <p>12 DAPHNE HA, ESQ.</p> <p>13 For Gabriel Capital Corp.</p> <p>14 and J. Ezra Merkin</p> <p>15 NORTON ROSE FULBRIGHT</p> <p>16 Fulbright &amp; Jaworski, LLP</p> <p>17 666 Fifth Avenue</p> <p>18 New York, New York 10103-3198</p> <p>19 BY: JUDITH A. ARCHER, ESQ.</p> <p>20 JAMI MILLS VIBBERT, ESQ.</p> <p>21 For Ascot Partners LP</p> <p>22 REED SMITH LLP</p> <p>23 599 Lexington Avenue</p> <p>24 New York, New York 10022</p> <p>25 BY: JORDAN W. SIEV, ESQ.</p> <p>JAMES C. MCCARROLL, ESQ.</p> <p>NICOLE LAPSATIS, ESQ.</p> <p>For Gabriel, LP and Ariel Fund, LP</p> <p>ALSO PRESENT:</p> <p>BART M. SCHWARTZ, Receiver for Hedge Funds</p> <p>RALPH DAWSON</p> <p>OLEG BITMAN, Baker Hostetler</p> <p>JIM SOTO, Videographer</p>	<p>1 THE VIDEOGRAPHER: Good morning,</p> <p>2 we're on the record. The time on the monitor is</p> <p>3 9:47 a.m. Today is the 24th day of February,</p> <p>4 2015. We are here at 45 Rockefeller Plaza, New</p> <p>5 York, New York for the purpose of taking the</p> <p>6 videotaped deposition of Mr. Ezra Merkin in re</p> <p>7 Picard versus Merkin.</p> <p>8 Videographer is James Soto, the</p> <p>9 court reporter is Nancy Bendish, both of Bendish</p> <p>10 Reporting.</p> <p>11 Will all counsel please announce</p> <p>12 your appearances for the record.</p> <p>13 MR. STEINER: Neil Steiner with</p> <p>14 Ms. Daphne Ha from Dechert representing</p> <p>15 Mr. Merkin and Gabriel Capital Corporation.</p> <p>16 MS. ARCHER: Judith Archer from</p> <p>17 Norton Rose Fulbright. With me is Jami Vibbert</p> <p>18 and Ralph Dawson. Norton Rose Fulbright</p> <p>19 represents Mr. Dawson as the receiver of Ascot</p> <p>20 Partners LP.</p> <p>21 MR. MCCARROLL: James McCarroll of</p> <p>22 Reed Smith LLP. With me is my partner Jordan</p> <p>23 Siev. We represent Bart Schwartz, who is with</p> <p>24 me to my left, who is the court appointed</p> <p>25 receiver for Ariel Fund Limited and Gabriel</p>
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<p>1 A. I was never a market making 2 customer. 3 Q. Do you know whether it 4 self-cleared? 5 A. So I don't know. 6 Q. You don't know. 7 A. Or if I knew, if I knew, I don't 8 remember. 9 Q. Well, when he told you he 10 self-cleared at the investment advisory end, was 11 that a red flag to you? 12 MR. STEINER: Objection to form. 13 MR. SIEV: Objection to form. 14 Q. They're objecting because I didn't 15 ask what a red flag is, so let's do that. 16 A. I'm sorry? 17 Q. They didn't like me using red 18 flag. So let me ask you this. 19 A. You just lost me for a second. 20 Q. I know. It's a lawyer thing, they 21 call it foundation, whatever. You know what I 22 was talking about but the record doesn't. In 23 any event -- 24 A. In the meantime you lost me, and 25 not them. You really lost me.</p>	<p>1 A. So you think a red flag means a 2 risk factor? 3 Q. Yes. 4 A. Okay, fine. 5 Q. All right. So, would you -- how 6 do you view self-clearing that, in terms of a 7 risk factor? 8 A. Normally speaking? Look, I had 9 accounts with persons who self -- with firms who 10 self-cleared for a long time. If you go back 11 long enough, many more people self-cleared until 12 clearing was made part of the industry. 13 So clearing, which relates a 14 little bit to who has custody, presuming the 15 clearing broker has custody, is one of the 16 attributes that we didn't speak about all that 17 much in terms of prime broker, but when earlier 18 you had asked me what a prime broker is and I 19 said there's many many -- there's several 20 different attributes to them, custody is also 21 something that a prime broker has. 22 Q. Right. 23 A. So, one might think of somebody 24 who is a custodian as a prime broker by virtue 25 of that alone.</p>
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<p>1 Q. They're with me, they're having a 2 good time. 3 Anyway, the bottom line is this. 4 Do you know what a red flag is in terms of in 5 the investment advisory business, a red flag? 6 MR. SIEV: Objection to the form. 7 A. I'm not sure exactly what you 8 mean, but I take you to mean some sort of a 9 caution. 10 Q. Okay. Well, I don't want you to 11 take that from my question. I'm asking you 12 independently of me saying that, does the term 13 "red flag" mean anything to you? 14 A. Let me just be, perhaps, a little 15 bit clearer. I'm not sure whether by red flag 16 you mean something that would be an absolute 17 bar -- 18 Q. No. 19 A. -- or something that would be a 20 caution. That's what I was getting at. 21 Q. Let me rephrase it then. That's a 22 very good point. 23 Something that would expose 24 something as a risk factor that needed to be 25 examined.</p>	<p>1 Q. Right. 2 A. To this day, I sort of said this 3 earlier, if you have an account at Goldman 4 Sachs, the one I was referring to, this 5 hypothetical account this morning, you're gonna 6 clear at Goldman Sachs. If you have an account 7 at Merrill Lynch, you're going to clear at 8 Merrill Lynch. Merrill Lynch is not in the 9 business of giving the profitable clearing part 10 of their business away to Goldman Sachs, or vice 11 versa. I don't say that with encyclopedic 12 knowledge, but that's not the way the business 13 works. 14 In Mr. Madoff's case, it was very 15 clear, he made very clear that the accounts were 16 maintained at his shop and the confirmations and 17 the monthlies that you received were on his 18 letterhead. By letterhead I don't mean an 8-1/2 19 by 11 letter, but the tickets had his firm on 20 them. 21 That seemed to me to be a risk 22 factor to be weighed, but it was inconceivable 23 to me that somebody who had his prominence both 24 within the industry, to some extent his 25 legendary status in the industry, the sheer</p>

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<p>1 volume of business he did on the wholesale side, 2 that was always of interest to me. 3 These Fidelity and Charles Schwab 4 orders are sought after. They are the staff of 5 life to people who handle their business. And 6 Madoff was, I spoke to somebody at Fidelity, 7 that's what I mean as a customer at this time, 8 and got back very positive review, all part of 9 the due diligence process. 10 I spoke to investors of his, 11 clients of his as distinct from customers. 12 Clients on the market-making side at that time, 13 who I think are some of the single most able 14 people I've met in the investment business, 15 still think so. I still think that about some 16 of these people. And, you know, they all had 17 very positive things to say. 18 Q. Do you know if Mr. Madoff paid for 19 order flow? 20 A. Pay for order flow was a subject 21 of his over a number of years. It subsided over 22 time. The whole -- I'm moving ahead in time 23 frame, so if that's not where you want to go -- 24 Q. At the time you're doing your due 25 diligence here?</p>	<p>1 A. Um-hum. 2 Q. Does Merrill Lynch clear trades? 3 A. Does Merrill Lynch clear some 4 trades? 5 Q. Yes. 6 A. I would imagine so. 7 Q. Do you have any knowledge that 8 they clear trades? 9 A. I believe they do. 10 Q. And they were cleared -- do you 11 know what the term "introducing broker" means? 12 A. Not very precisely, no. 13 Q. Do you know if introducing broker 14 clears trades? 15 A. I don't know -- the answer is I'm 16 not sure. 17 Q. When the person who clears the 18 trade -- like Merrill Lynch is clearing trades 19 for Madoff, let's assume that he was clearing 20 his trades through Merrill Lynch, right? 21 A. I don't think he did. 22 Q. No, no, but I'm asking you to 23 assume that he did. 24 A. Okay. 25 Q. You would know, would you not,</p>
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<p>1 A. Initially. 2 Q. Yeah, initially. Did you know at 3 that time that perhaps one of the reasons he had 4 the clients he did is because he paid for order 5 flow? 6 A. I don't remember whether it came 7 up in the first meeting or two or not. I just 8 don't remember. 9 Q. Did you subsequently learn that he 10 paid for order flow? 11 A. I certainly know that payment for 12 flow was something that he said that he was open 13 to and did. I was not a wholesale customer, I 14 can't -- the way you worded the question, can I 15 confirm to you independently that he paid for 16 order flow, I cannot. I can only tell you what 17 he told me. 18 Q. When you talked to Fidelity did 19 you talk about paying for order flow? 20 A. Certainly not at that first 21 meeting. 22 Q. Did you ever talk to him about it? 23 A. Not that I recall. 24 Q. Let's go back to clearing broker 25 again.</p>	<p>1 that when you got a statement from Merrill Lynch 2 that they held a certain stock long that they 3 had that stock, would you not? 4 A. I just don't follow. You're 5 saying now that I got a, let's say a monthly 6 statement from Merrill Lynch that Bernard L. 7 Madoff had bought a hundred shares from me and 8 that was held at Merrill? 9 Q. Yes. 10 A. I just don't see the nexus to 11 Bernie. I'm missing something. 12 Q. If Bernie is using Merrill Lynch 13 to clear his trades. He's not clearing them 14 himself. 15 A. I would have known -- I would have 16 known -- had Bernie cleared our account at 17 Merrill Lynch, I would have had statements from 18 Merrill Lynch that would have reported that 19 information to me, yes. 20 Q. And would -- are there regulations 21 governing clearing brokers? 22 A. I would think yes. 23 Q. Are you familiar with them? 24 A. Not terribly well, no. 25 Q. When Bernie was clearing his own</p>

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<p>1 is what did you understand him to be doing? Was</p> <p>2 he buying at one time during the day or several</p> <p>3 times throughout the day?</p> <p>4 A. I certainly didn't think he was</p> <p>5 only buying one time during the day and --</p> <p>6 although he may have. I'm sort of not sure what</p> <p>7 several means. But he could have been buying</p> <p>8 over the course of a day in more than one trade.</p> <p>9 And he didn't have to do the entire position in</p> <p>10 one day and he didn't have to do the entire</p> <p>11 position at all.</p> <p>12 We could be -- I mean, if this is</p> <p>13 important I should just mention it. We</p> <p>14 sometimes caught a turn with one-third in and</p> <p>15 two-thirds out or two-thirds in and one-third</p> <p>16 out.</p> <p>17 Q. Right.</p> <p>18 A. So, again, I'm not sure that's</p> <p>19 what you mean by time slicing, but we didn't</p> <p>20 always get all in. We could be partially in and</p> <p>21 we didn't get in all in on one trade and we</p> <p>22 didn't necessarily get all in on one day.</p> <p>23 The one trade per day, we saw</p> <p>24 things at the end of the day, but the different,</p> <p>25 the trading on different trade dates is</p>	<p>1 think it is. There's thousands and thousands of</p> <p>2 stocks. He started with a buy list that could</p> <p>3 only be a hundred. Of that he did as many as</p> <p>4 half of them.</p> <p>5 So, he just wasn't that much of</p> <p>6 a -- there's only so many choices he had. He</p> <p>7 was basically doing a form of market timing that</p> <p>8 was nuanced by that fifth or 50 that he picked</p> <p>9 relative to trading restrictions and vis-a-vis</p> <p>10 options.</p> <p>11 In many ways he was -- well, do I</p> <p>12 think that's true? I'll think about it.</p> <p>13 Q. Is there a reason he would pick</p> <p>14 stocks as opposed to just trading the entire</p> <p>15 index? If you know.</p> <p>16 A. Well, we talked about that before.</p> <p>17 When you say trading the entire index, you mean</p> <p>18 buying the index or buying every stock in the</p> <p>19 index?</p> <p>20 Q. Let's try with buying the index.</p> <p>21 A. I'm not sure what -- this was in</p> <p>22 the end an arbitrage strategy.</p> <p>23 Q. Right.</p> <p>24 A. In many ways any options arbitrage</p> <p>25 strategy. If he had every single stock in the</p>
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<p>1 something you might have seen pretty quickly.</p> <p>2 Q. Does the phrase the 12-minute rule</p> <p>3 mean anything to you?</p> <p>4 A. The 12-minute rule?</p> <p>5 Q. Yes.</p> <p>6 A. It seems to have come up in</p> <p>7 conversations. I don't place it exactly when</p> <p>8 and where.</p> <p>9 Q. Okay. I think we can place it</p> <p>10 later, so let's pass on that for now.</p> <p>11 A. Okay.</p> <p>12 Q. Very simple question: Do you know</p> <p>13 if Mr. Madoff picked stocks?</p> <p>14 A. Well, there came a time, as</p> <p>15 persons of your profession like to say, that the</p> <p>16 trading director came into place and he had to</p> <p>17 pick stocks in compliance with the trading</p> <p>18 director. And before that in compliance with</p> <p>19 the basic overall strategies he and I discussed</p> <p>20 it many, many many times.</p> <p>21 So for starters, he was picking</p> <p>22 stocks that were in the S &amp; P 100. He was</p> <p>23 picking perhaps as many as half of them. So,</p> <p>24 you know, there are -- I can't remember exactly</p> <p>25 but I think well over 3,000 listed stocks, I</p>	<p>1 index pegged precisely correctly calibrated to</p> <p>2 exactly its component in the index, then you're</p> <p>3 long the index. Then you have a perfect hedge.</p> <p>4 And then you have reduced risk to a level that,</p> <p>5 you know, an informal and by no means</p> <p>6 exhaustively correct but nonetheless handy</p> <p>7 definition of a perfect hedge is, you're gonna</p> <p>8 make whatever the risk-free money market rate of</p> <p>9 return gives you. You've got to take risks to</p> <p>10 make money.</p> <p>11 Q. Of course.</p> <p>12 A. So if he owned every single</p> <p>13 security, unless -- unless he bought them, you</p> <p>14 know, over different periods of time, different</p> <p>15 days, weighted them differently against the</p> <p>16 basket, I mean, you have to do something.</p> <p>17 Q. Would that have been -- well, let</p> <p>18 me rephrase this. Withdrawn. I'm not going to</p> <p>19 ask.</p> <p>20 What impact, if any, Mr. Merkin,</p> <p>21 did Mr. Madoff's ability to perform executions</p> <p>22 impact his strategy?</p> <p>23 A. His ability to execute impacted</p> <p>24 his strategy?</p> <p>25 Q. Yeah.</p>

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1 some of the Russian restructures, sovereign debt  
2 restructures.

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1 paraphrased.  
2 I think -- let's put it this way,  
3 to the extent that I can make some sense of  
4 this -- I don't really -- if we discussed --  
5 Madoff was, was, I don't think Madoff failed to  
6 answer too many questions certainly that I put  
7 to him.

8 Where he would say that's -- that  
9 that is a subject that he considers somewhat  
10 proprietary is what you called the algorithm.  
11 In other words, he wasn't that interested in  
12 training people -- he used to say, I'm not that  
13 interested in training people in Madoff. And by  
14 that he meant to say, in the algorithm. In  
15 other words, this is the thing that we do that  
16 we think is proprietary, it comes out of the  
17 totality of what we spend on the computer  
18 systems and the order flow and it lets us judge  
19 these turns. That was something that he would  
20 answer and consider proprietary.

21 So I'm just guessing -- doesn't  
22 even relate to this, so I don't know. I've  
23 spent five minutes looking at this document, I  
24 wouldn't put this at the top of the list of what  
25 he got wrong. I think the top of the list is

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1 crowded with other things that are just  
2 factually wrong. This one I think he either --  
3 just assuming that he was on the same phone  
4 call. I don't know.

5 Q. Let me just offer that and move  
6 off the document for a minute.

7 You know, did you ever have a  
8 concern, from a scalability standpoint, of the  
9 ability of Merkin to -- Merkin -- Mr. Madoff to  
10 purchase options consistent with the strategy?

11 A. So purchase, you mean puts?

12 Q. Yeah, purchasing puts, or selling  
13 calls. One or the other that, since he had to  
14 do both theoretically under the split-strike,  
15 that the volume of those options on either side  
16 of the collar, whether that volume was available  
17 to him given the size of his investments?

18 MR. STEINER: Objection to form.  
19

23 A. Mr. Madoff and I certainly  
24 discussed that over time and he certainly made  
25 clear that an ever evolving higher percentage of

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<p>1 his options executions were unlisted rather than</p> <p>2 listed. And that that number could be a very</p> <p>3 large percentage and a very large number of</p> <p>4 options.</p> <p>5 Q. Where would unlisted options be</p> <p>6 available?</p> <p>7 A. When you say where?</p> <p>8 Q. In other words, I can go to the</p> <p>9 CBOE and buy an option, right?</p> <p>10 A. Well, if you buy, if I understand</p> <p>11 you, if you buy an option on the CBOE that would</p> <p>12 be what I would call a listed option and it</p> <p>13 would be -- it would be CBOE cleared.</p> <p>14 Q. Right. So I'm asking now, you're</p> <p>15 not buying a listed option. You're buying an</p> <p>16 unlisted option.</p> <p>17 A. Okay.</p> <p>18 Q. Where do you go to buy it?</p> <p>19 A. Broadly speaking, I mean, it's not</p> <p>20 a physical location. It's not a floor.</p> <p>21 Q. I understand that.</p> <p>22 A. I wasn't sure what you meant about</p> <p>23 the where. It is in the virtual -- maybe</p> <p>24 virtual is not the right word. It's in the</p> <p>25 derivative marketplace.</p>	<p>1 derivative.</p> <p>2 Q. Are you saying there are trillions</p> <p>3 of dollars in options?</p> <p>4 A. I'm saying we don't know or I</p> <p>5 don't know what the total market is in options.</p> <p>6 I'm saying a derivative market as a whole is</p> <p>7 hundreds of trillions and whether there are --</p> <p>8 and hundreds and hundreds and hundreds. There</p> <p>9 was just an article not such a long time ago and</p> <p>10 not in this time period. I mean --</p> <p>11 Q. Right.</p> <p>12 A. -- 2014, let's say, or maybe '13,</p> <p>13 but probably not recent enough to be '15. One</p> <p>14 of the European regulators, I think The Bank of</p> <p>15 International Settlements, tries to guess at the</p> <p>16 size of some of these markets and says it's</p> <p>17 guessing conservatively and it's just that much</p> <p>18 bigger and there's this ongoing regulatory</p> <p>19 effort to have players in that market bring</p> <p>20 their derivatives at least into more reportable</p> <p>21 forms so that the world knows what it's about.</p> <p>22 Q. I understand --</p> <p>23 A. This is clearly the market that I</p> <p>24 think Bernie meant he was trading these options</p> <p>25 in. Finding them and buying them.</p>
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<p>1 Q. Okay.</p> <p>2 A. You're buying derivatives. You're</p> <p>3 buying non-exchange listed options that you are</p> <p>4 bargaining for, contracting for and closing,</p> <p>5 selling.</p> <p>6 Q. Who makes a market in those?</p> <p>7 A. There are -- you know, this is one</p> <p>8 of the lessons of '08 and one of the great fears</p> <p>9 today, which is we don't really know. The "we"</p> <p>10 is a little bit too broad because there might be</p> <p>11 some people, there surely are some people that</p> <p>12 know about this than I do, but the size of that</p> <p>13 market is, you know, starts at trillions and</p> <p>14 goes bigger and bigger and bigger. This is the</p> <p>15 market that, just to take an example, that, you</p> <p>16 know, Buffett has -- continues less strongly</p> <p>17 than he did, but has been warning about that</p> <p>18 when a crisis comes it will be because of the</p> <p>19 derivative marketplace. Because the world</p> <p>20 brings so much of its business in the derivative</p> <p>21 marketplace.</p> <p>22 Q. You're using derivative as a</p> <p>23 general term here?</p> <p>24 A. Not sure what you mean by a</p> <p>25 general term. I mean what you are buying is a</p>	<p>1 Q. But that's a different market than</p> <p>2 the one you just described?</p> <p>3 A. What is the "this"?</p> <p>4 Q. The one you described is</p> <p>5 derivative is in a broad sense, credit default</p> <p>6 swaps, everything that's involved --</p> <p>7 A. Swaps, derivatives, options.</p> <p>8 Q. What I'm talking about is a very</p> <p>9 limited thing. I'm talking about somebody who's</p> <p>10 going to be in the S &amp; P 100 stocks.</p> <p>11 A. On the index. That's what I</p> <p>12 thought you meant.</p> <p>13 Q. Exactly. And you're saying</p> <p>14 there's trillions of dollars of those options</p> <p>15 out there?</p> <p>16 A. I'm saying there could be and I</p> <p>17 don't really know how large the size is. But I</p> <p>18 think you -- there's something in your question</p> <p>19 I don't totally follow, I think.</p> <p>20 If you're not buying these options</p> <p>21 CBOE listed, I think we agree that you're buying</p> <p>22 them as a derivative.</p> <p>23 Q. You're calling it that, I did not.</p> <p>24 Why are you calling it a derivative?</p> <p>25 A. Because I think that's what it is.</p>



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<p>1 You want to call it a swap, that's okay too, 2 although I think from an accounting point of 3 view I think it's actually sometimes called a 4 derivative, from a formal accounting point of 5 view. And I'm not remotely the last word on 6 formal accounting definitions. 7 But there's an enormous 8 marketplace in derivatives. Not only do we not 9 know how big it is, we don't know what all the 10 instruments are. 11 Q. So a credit default swap would 12 also be a derivative? 13 A. Certainly might be, sure. 14 Q. Right. But I'm not talking about 15 all derivatives, I'm talking about only one. 16 I'm not suggesting it's not a derivative in a 17 classic sense, but the marketplace derivatives 18 for -- now we're only talking S &amp; P 100 stocks 19 and we're talking a collar here for those where 20 we're selling -- 21 A. The same options we were 22 describing earlier. 23 Q. Right. We've been describing. 24 Are you saying, I'll ask you one more time, that 25 that marketplace is in the trillions?</p>	<p>1 A. Relationship, I've got the bold 2 word, okay. 3 Q. I actually just want not even to 4 ask you whether you said these things but if any 5 of them are even true. Can I ask you, for 6 example, the relationship that says that Bernie 7 was the executor of Ezra's father's will. Is 8 that correct? 9 A. No. Nor did I say it. 10 Q. Ezra's brother and brother-in-law 11 worked for Madoff? 12 A. No. 13 Q. Did you say that? 14 A. To tell you the truth, now that I 15 see this -- I haven't seen this before. It is 16 true that Ezra's brother and brother-in-law were 17 the executives of Ezra's father's will, as well 18 as Ezra. But my brother and brother-in-law were 19 the executives of my father's will and my mother 20 was alive then. When was this? Anyway, they 21 were the executives of my mother's estate as 22 well. 23 Q. '03. 24 A. So how garbled -- I can't really 25 tell you why who was the executor of my father's</p>
Page 315	Page 317
<p>1 MR. STEINER: Object to the form. 2 A. It depends what you're measuring 3 with the use of the word "trillions." Are you 4 talking about -- I mean, these are complex 5 things that also have technical pieces to them. 6 Are you talking about notional, 7 are you talking about actual, are you talking 8 about total amount of capital hedged. But could 9 they be in the trillions? Do we know, could 10 there have been the volume available for this in 11 the derivative marketplace? Absolutely. 12 Q. Did you ever, yourself, on behalf 13 of yourself or any of your funds, trade in 14 unlisted options? 15 A. I don't remember. We certainly 16 could have. 17 Q. Okay. The other thing about 18 options -- well, no, I already asked that. I 19 apologize. One second. 20 A. Sure. 21 Q. I want to ask you some questions 22 with regard to -- it's page -- well, doesn't 23 seem right here, but anyway, CON 0000060. This 24 one. Where it says, the bold word is 25 "relationship."</p>	<p>1 will would have come up, but my brother and 2 brother-in-law were, and this is partly what I 3 mean when I suggested telephone conversations 4 don't unroll these ways and I read this for two 5 minutes and I didn't finish the whole thing, but 6 doesn't look to me like somebody took very good 7 notes and it looked to me like somebody tidied 8 up a lot of things for a neat presentation. 9 MR. SHEEHAN: Well, I am done for 10 today. 11 THE WITNESS: Okay. 12 MR. SHEEHAN: Thank you. 13 THE VIDEOGRAPHER: Off the record 14 6:16. 15 (Deposition adjourned.) 16 -o0o- 17 18 19 20 21 22 23 24 25</p>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

BERNARD L. MADOFF INVESTMENT                      Adv.Pro.No.  
SECURITIES LLC,    08-01789 (BRL)  
Debtor.

-----x

IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,  
Plaintiff,    Adv.Pro.No.  
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

-----x

CONTINUED VIDEOTAPED DEPOSITION OF  
J. EZRA MERKIN, as reported by Nancy C. Bendish,  
Certified Court Reporter, RMR, CRR, and Notary  
Public of the State of New York, at the offices  
of Baker Hostetler, 45 Rockefeller Plaza, New  
York, New York, on Wednesday, February 25, 2015,  
commencing at 9:42 a.m.

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1	APPEARANCES:		1	EXHIBITS (Cont'd)	
2			2	IDENT.	PAGE
3	BAKER HOSTETTLER, LLP		3	Trustee 373 Email, BS00340382.....	592
4	45 Rockefeller Plaza		4	Trustee 374 Email, BS00337463.....	603
5	New York, New York 10111		5	Trustee 375 Ascot Partners Investor	
6	BY: BRIAN W. SONG, ESQ.		6	Capital Accounts, GCC-P 0463582.635	
7	LAN HOANG, ESQ.		7	Trustee 376 Ariel Fund Ltd Capital Account	
8	For Irving H. Picard, Trustee		8	Summary, GCC-P 0463580.....	642
9	DECHERT, LLP		9	Trustee 377 Gabriel Capital LP Partner	
10	1095 Avenue of the Americas		10	Capital Accounts, GCC-P 0463581.647	
11	New York, New York 10036-6797		11		
12	BY: NEIL A. STEINER, ESQ.		12		
13	MARIEL BRONEN, ESQ.		13		
14	For Gabriel Capital Corp.		14		
15	and J. Ezra Merkin		15		
16	NORTON ROSE FULBRIGHT		16		
17	Fulbright & Jaworski, LLP		17		
18	666 Fifth Avenue		18		
19	New York, New York 10103-3198		19		
20	BY: JUDITH A. ARCHER, ESQ.		20		
21	JAMI MILLS VIBBERT, ESQ.		21		
22	For Ascot Partners LP		22		
23	REED SMITH LLP		23		
24	599 Lexington Avenue		24		
25	New York, New York 10022		25		
	BY: JORDAN W. SIEV, ESQ.				
	NICOLE LAPSATIS, ESQ.				
	For Gabriel, LP and Ariel Fund, LP				
	ALSO PRESENT:				
	BART M. SCHWARTZ, Receiver for Hedge Funds				
	RALPH DAWSON				
	OLEG BITMAN, Baker Hostetler				
	JIM SOTO, Videographer				
Page 323			Page 325		
1	INDEX		1	THE VIDEOGRAPHER: Good morning,	
2	WITNESS	PAGE	2	we're on the record, 9:42.	
3			3	J. E Z R A M E R K I N, previously affirmed.	
4	J. EZRA MERKIN		4	EXAMINATION BY MR. SONG:	
5	Examination by Mr. Song.....	5	5	Q. Good morning, Mr. Merkin.	
6			6	A. Good morning.	
7			7	MR. STEINER: Brian, before we	
8			8	start, I did want to put on the record that our	
9			9	understanding of the rules is that you get one	
10			10	examiner per witness and Mr. Sheehan started	
11			11	taking this deposition yesterday and our view is	
12	EXHIBITS		12	that he should be the one who's here completing	
13	IDENT. DESCRIPTION PAGE		13	it. We understand you disagree, we don't think	
14			14	that that's what the rules provide, but we are	
15	Trustee 364 Document entitled "Gabriel		15	interested in finishing this deposition so we	
16	Capital Group, December 2005,		16	can complete discovery and move forward with the	
17	"BS00038683-697.....	326	17	case, and so, you know, subject to just noting	
18	Trustee 365 Documents BS00306002-006.....	351	18	our objection, start with your questions.	
19	Trustee 366 Documents BS00305716-723.....	351	19	MR. SONG: Okay.	
20	Trustee 367 Transcription of Audio File		20	BY MR. SONG:	
21	158.mp3.....	484	21	Q. Good morning, Mr. Merkin. We met	
22	Trustee 368 Transcription of Audio File		22	yesterday. I'm Brian Song, I'm an attorney for	
23	bd.mp3.....	484	23	the Trustee and I will be continuing your	
24	Trustee 369 Transcription of Audio File		24	examination today. My apologies that	
25	1bf.mp3.....	484	25	Mr. Sheehan is unavailable today as he is in	
	Trustee 370 Email, UBPAMMERKIN00000004.....	527			
	Trustee 371 Email, GCC-P 0152946.....	527			
	Trustee 372 Email, GCC-P 0479368.....	586			

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<p>1 if you remember we looked yesterday at those 2 declining returns, in one of the chart 3 presentations, those green lines that went down 4 over a decent period of years, but still 5 acceptable, so that you could begin to come to a 6 conclusion that he's learned how to scale his 7 business. 8 Q. Did Mr. Madoff ever express to you 9 that there was a limit to the assets under 10 management that he could take for his strategy? 11 A. He certainly expressed that at any 12 given time he was not interested in giving an 13 additional capacity. He would turn down 14 additional capacity routinely or postpone it. 15 That certainly conveyed the notion that he was 16 capacity sensitive, capacity possibly 17 constrained. He did not convey a single digit 18 to me and say this is what I can manage, I 19 cannot manage a penny more. 20 Q. And did you ever develop a sense 21 of the limits of what Mr. Madoff's scalability 22 would be? 23 A. In absolute dollars? 24 Q. Yes. 25 A. I didn't -- it's not the way I</p>	<p>1 Q. And again I think you -- 2 A. I meant to say ADV. That last 3 line again is scalability issue. 4 Q. Can you turn to page 367, which is 5 the fourth page of this document. 6 A. Yes. 7 Q. The top of 367 is actually a 8 continuation of comments made by Mr. Madoff, 9 starting on 366, but what I want to direct your 10 attention to -- 11 A. This is a good illustration of why 12 it's hard to take notes. 13 Q. I want to direct your attention at 14 the top of 367 there's a reference to, says 15 Goldman Sachs, for example, does an almost 16 identical type of arbitrage strategy. Do you 17 see that? 18 A. Yes. 19 Q. Do you recall Mr. Madoff talking 20 to you about an arbitrage strategy that Goldman 21 Sachs also had at that point in time? 22 A. I'm not sure I remember that 23 exactly today, but I'm sure this is what was 24 said. I don't think anybody is making up this 25 transcript.</p>
Page 475	Page 477
<p>1 would have thought of it or not the way I would 2 have expressed it, so... 3 I was acutely aware that 4 Mr. Madoff was not interested in managing 5 additional money at many points in the 6 relationship, and explained himself to me as 7 either making exceptions, as we saw earlier, and 8 as occasionally having, in a different part of 9 his book, redemptions. 10 Q. Okay. The last E on this page? 11 A. The last E? 12 Q. The last E, where you talk about, 13 I couldn't tell you if I'm one of your top 10 14 clients, top 20, top 50, top five. See that? 15 A. No -- oh, yes. Here it is. Fine. 16 Q. Did you have an understanding as 17 to how many clients Mr. Madoff had in the 18 investment advisory business at this point in 19 time? 20 A. I don't remember any understanding 21 at that time. 22 Q. Did you ever have an 23 understanding? 24 A. Well, I'm sure I must have looked 25 at the NAV to see what it suggested.</p>	<p>1 Q. Did you ever speak to anybody at 2 Goldman Sachs regarding their arbitrage 3 strategy? 4 A. Their arbitrage strategy? 5 Q. Yes. 6 A. God, I spoke to so many people at 7 Goldman Sachs over the years, so many years 8 about so many different things. Not that I 9 remember. 10 Q. Do you see Mr. Madoff is claiming 11 that Goldman Sachs is -- well, he says if I'm 12 making 14 or 13 percent in some quarters, 13 they're probably coming in at nine percent. Do 14 you see that? 15 A. I see that. He's not saying it's 16 the same. He's saying it's almost identical. 17 Q. Right. Do you have an 18 understanding as to why Goldman Sachs would be 19 less successful at the strategy than Mr. Madoff? 20 A. Well, he says you won't hear about 21 it, you won't know about it, because they're not 22 telling you about it, which goes to what I knew 23 or didn't know about the Goldman Sachs. But I 24 think the next big B paragraph tries to explain 25 it. If you let me read it for a moment, I'll</p>

# **REPLY EXHIBIT**

## **12**

ORIGINAL

1

-----X  
IN THE MATTER OF

MADOFF CHARITIES INVESTIGATION  
-----X

120 Broadway  
New York, New York

January 30, 2009  
10:02 a.m.

EXAMINATION UNDER OATH of J.

EZRA MERKIN, pursuant to Subpoena, held at  
the above place, date and time, before  
Alice Schulman, a Notary Public of the  
State of New York.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

A P P E A R A N C E S:

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NEIL STEINER, ESQ., and  
SARA MENDOLA, ESQ.

STATE OF NEW YORK  
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120 Broadway - 23rd Floor  
New York, New York 10271-0332

BY: DAVID A. MARKOWITZ, ESQ.,  
Bureau Chief  
Investor Protection Bureau  
ERIC CORNGOLD, ESQ.,  
Executive Deputy AG for  
Economic Justice  
JASON R. LILIEN, ESQ.  
Bureau Chief Charities Bureau  
DANIEL SANGEAP, AAG  
HARRIET ROSEN, AAG

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212-267-6868

516-608-2400

J. E. Merkin

document beyond any conversations with  
me.

There were investors who came  
into Ascot looking for Madoff and saying  
this is what we want, and so I'm not sure  
that it was necessarily the first leg of  
the conversation was a disclosure for me.

There were investors who came in  
looking for Ascot and ran out and got a  
conversation perhaps about the strategy  
and didn't necessarily get a full  
conversation about Bernie's role, but they  
certainly had the documents.

And depending upon how many  
questions were asked and depending on how  
long the conversation was, I pretty much  
had a practice of making sure they  
understood that the strategies were  
executed through Madoff.

Q. Now, with respect to Ramaz, did  
you disclose to Ramaz that you had an  
affiliation with Madoff?

A. I did that, I think, in the  
context that is relatively unimportant.



# **REPLY EXHIBIT**

## **13**

**From:** Autera, Michael  
**Sent:** Tue, 30 Oct 2007 11:14:15 GMT  
**To:** 'Renee Nadler'  
**Subject:** RE: Quick Question from Tufts

---

Historically, the non-Madoff strategies have represented less than 5% of Ascot's gross exposure. The exposure in 2007 has been less than 5% as well.

---

**From:** Renee Nadler [mailto:rnadler@invoff.trustees.tufts.edu]  
**Sent:** Monday, October 29, 2007 4:45 PM  
**To:** Autera, Michael  
**Subject:** RE: Quick Question from Tufts

Hi Mike,  
Nice to see you when we were in NY last week. A quick follow up question for you:

Ezra mentioned that a portion of Ascot is being managed internally with LEAPs and other option strategies. Could you let me know what % of capital is allocated to positions beyond the capital allocated to the Madoff team. (I don't need a precise number, just trying to get a sense of what it has been on average in 2007 and how that compares to other years.)

Thanks!

Renee

---

Renee Nadler, CFA  
Director of Investments  
Tufts University  
151 Merrimac Street, Suite 600  
Boston, MA  
02114

617-627-3491 (tel)  
617-627-6754 (fax)  
RNadler@invoff.trustees.tufts.edu (e-mail)

# **REPLY EXHIBIT**

## **14**



8. If the Board of Trustees Real Estate Committee approves of the transaction, some 7.0 million dollars can be invested in the purchase of a 7 $\frac{1}{2}$ %, 20.0 million dollar mortgage note of Francis Greenburger relating to his leasehold on 55 Fifth Avenue to be sold by the FDIC on behalf of Dollar Dry Dock Savings bank during a November 10 auction. Annual return is some 1.5 million dollars or 100% of cash flow, whichever is higher.

SES:ajs

cc: Ms. Navah Levine  
Mr. Bernard Pittinsky  
Mr. Jack Sproule

**1998 CONFLICT OF INTEREST REPORT  
TO THE BOARD OF TRUSTEES  
MARCH 1999**

During the 1998 calendar year, the University "did business" with the following firms and companies in which one or more members of the Board had or have a financial interest. In each instance the business relationship was based upon a proven track record, the reputation of the firm or individuals involved, demonstrated experience and competence, and/or the result of competitive bids.

When applicable, such as the selection of investment managers, where the Board Investment Committee made and approved the decisions the appropriate Board committee was involved. In all cases, the fees charged were equal to and in many instances less than the industry standard.

**Phillip Altheim**

Vice Chairman, Board of Overseers

Forest Electric Corp. was the electrical sub-contractor selected by Knightsbridge Construction Company in connection with the renovation of the 11<sup>th</sup> floor of the Brookdale Center for the Cardozo School of Law. The Forest Electric sub-contract totaled \$275,000 of the \$1.5 million Knightsbridge contract for the 11<sup>th</sup> floor.

**Leon Black**

Member of the Cardozo Board

30.0 million dollar investment committed for management to the Apollo Investment Fund of which only 6.5 million was under management in 1998 resulting in a management fee of \$33,000.

**Judah Feinerman**

RIETS Board Chairman

Member of Board of Trustees

Judd Associates. Insurance broker.  
Total policy premiums \$38,000.

**Morris Green**

Vice Chairman - RIETS Board

Member of Board of Trustees

Total payments in 1998 totaled \$103,000 as rental payments for apartments used by students in a Washington Heights (480 W. 187<sup>th</sup> Street) building in which Mr. Green has a financial interest.

In prior years the University had provided capital as an investor to acquire this building which has since been repaid.

Samuel H. Lindenbaum  
Honorary member-Board of  
Overseers

Rosenman & Colin.  
Represents the Institution as special land use  
counsel. Total fee paid in 1998 was \$14,000.

J. Ezra Merkin  
Member RIETS Board  
Chairman-Board of Trustees  
Investment Committee

General or Managing Partner or Chairman or Co-  
Manager of four (4) of the 24 investments classified  
by the Investment Committee as hedge funds, hedge  
investments or non-readily marketable investments.

Total University Funds Managed

Blackacre	11.2 Million Dollars
Long Horizon	19.3 Million Dollars
ABLECO	8.5 Million Dollars
Ascot Partners	<u>45.5 Million Dollars</u>
	84.5 Million Dollars

Management fees paid in 1998 totaled \$824,200  
including \$430,000 paid for funds in Ascot Partners  
which are essentially managed by Bernard Madoff, a  
member of the Board of Trustees. Incentive fees  
based upon 1998 performance totaled an additional  
\$601,454.

Each fund identified generated each year, to date, a  
net profit for the University and the University has  
never experienced a loss on these investments.

It should also be noted that one of Mr. Merkin's Co-  
Managers on the ABLECO fund is the General  
Manager of Cerberus which manages 15.0 million  
dollars of University funds.

Ira M. Millstein  
Vice Chairman - Board of Overseers

Partner Weil Gotshal & Manges LP  
Represents the University in regard to many matters.  
Ira Millstein has never charged the University for the  
considerable personal time he devotes to University  
issues. Total fees paid to the firm was \$251,000 in  
1998 primarily for real estate matters, but includes  
other matters and litigation.

Richard Parkoff

Member Yeshiva College Board

Total rental payments of \$724,000 were made in 1998 to The Parkoff Organization as rental payments for apartments used by students in seven (7) Washington Heights buildings in which The Parkoff Organization has a financial interest. In prior years mortgage financing was provided by the University to acquire these buildings under favorable terms in consideration of benefits granted to the University such as assuring access to all vacant apartments. The mortgage on several of these buildings is not at this time current, however, due to inadequate cash flow.

Phillp Rosen

Vice Chairman - Yeshiva College Board

Partner, Weil Gotshal & Manges LP  
Represents the University in regard to various real estate matters. Total fees paid to the firm in 1998 totaled \$251,000 (see note above in regard to Ira Millstein).

Howard J. Rubenstein

Member Board of Overseers -

Howard J. Rubenstein Associates.  
Firm retained annually to assist the Institution with special public relations problems and projects. Total annual payment \$32,000.

Stephen B. Stegel

Member Cardozo Board

President and CEO Insignia/Edward S. Gordon Co.  
Payment of commission in 1998 of \$752,000 in connection with the sale of 425 Fifth Avenue.



Minutes of a regular meeting of the Board of Trustees of Yeshiva University held  
pursuant to notice at the Midtown Campus, 245 Lexington Avenue, New York, New York at  
4:30 p.m. on Tuesday, March 13, 2001.

Present: Robert M. Beren, Chairman

Jack A. Belz  
Julius Berman  
Ludwig Bravmann  
J. Morton Davis  
David Eshaghian  
Judd Feinerman  
Dr. Felix L. Glaubach  
Dr. Jacob E. Goldman  
E. Billi Ivry  
Michael Jesselson  
Marcos Katz  
Mordecai D. Katz

Dr. Ira Kukin  
Dr. Norman Lamm  
Earle I. Mack  
Burton P. Resnick  
David I. Schachne  
Michael Scharf  
Ronald P. Stanton  
Moshael J. Straus, Esq.  
Sy Syms  
Morry Weiss  
Joseph Wilf  
David Yagoda

Also present:

Martin H. Bockstein, Esq.  
General Counsel

Dr. Herbert Dobrinsky  
Vice President for University Affairs

Peter Ferrera  
Director, Department of Communications and Public Affairs

Daniel T. Forman  
Vice President for Development

Dr. Morton Lowengrub  
Vice President for Academic Affairs

Dr. Sheldon E. Socol  
Vice President for Business Affairs  
and Secretary

L/Minutes/Trustees/04 23 01

**Confidential**  
**Treatment Requested**

YU 0001932

Mr. Beren called the meeting to order and welcomed all present. He noted that this was the first meeting of the Board to be held in the Gottesman Board Room and he called attention to the picture of the three generations of Gottesman family members on the wall of the Board Room.

The Chairman called for approval of the minutes of the Board meeting of November 14<sup>th</sup>, 2000. On motion duly made and seconded the minutes were approved.

Mr. Beren then referred to the previously distributed list of his recommendations for membership on the Committees of the Board of Trustees through the period ending September 30, 2001. A copy of the recommended nominees is attached. A motion was made to approve the recommended nominees. The motion was seconded and unanimously passed.

The Chairman then called upon Mr. Bravmann to give the report of the Nominating Committee. Mr. Bravmann said that the Nominating Committee had submitted to the Executive Committee, and the Executive Committee had unanimously approved the nominations of Dr. Jayne G. Beker, Chairman of the Ferkauf Graduate School of Psychology, and Marjorie Diener-Blenden, Chairman of the Stern College Board, for membership on the Board of Trustees for a two year term. The nominees were approved by the Board. Final action is deferred until the next meeting of the Board of Trustees in accordance with the By-laws.

The Chairman then called upon Dr. Morton Lowengrub. Dr. Lowengrub reported that the search is continuing for Deans of the Azrieli, Sy Syms, and Cardozo Schools. Dr. Lowengrub has interviewed candidates and has made recommendations to Dr. Lamm.

Mr. Resnick then reported on the proposed amendments to the By-laws. He called on Martin Bockstein to discuss the proposed amendments, which had previously been unanimously approved by the Executive Committee and recommended by it to the Board of Trustees.

L/Minutes/Trustees/04 23 01

Following a discussion, the proposed By-laws amendments were, on motion duly made and seconded, unanimously approved. The amendments will be submitted to the next meeting of the Board of Trustees in accordance with the By-laws.

Mr. Beren, noting the large attendance at this meeting, said that it is a tribute to Dr. Lamm on his 25<sup>th</sup> year as President.

The Chairman then called upon Mr. Stanton for a report on the Capital Campaign. Mr. Stanton said that the campaign has raised \$212 million through February 2001. This total includes the new Michael Price pledge of \$25 million to name The Center for Genetic and Translational Medicine. Many people were involved in numerous meetings to secure this gift including Dean Purpura, Ira Millstein, Burt Resnick, Einstein faculty members, Dr. Socol, and other staff. Mr. Price also retained assistance from Philanthropic Initiatives, a philanthropic consultant group in Boston who represented his interests.

The model of trustees and current supporters identifying new friends will be critical to our Capital Campaign success in future years. Mr. Stanton urged each Board member to identify three potential new major supporters in the belief that we will achieve success with one of the three.

Our Capital Campaign launch will take place on May 23 at the New-York Historical Society.

We are on target in announcing that ten families have committed pledges of \$10 million dollars and over. We are also on target in announcing that an additional ten families have committed gifts of \$5-\$10 million and an additional thirty families have committed gifts of between \$1 and \$5 million.

In regard to the Price gift, it was pointed out that it is a matching grant. \$25 million dollars has been pledged on condition that the AECOM Board raises an additional \$35 million. There are other specific conditions.

Mr. Beren then introduced Mr. Julius Berman, the Chairman of the RIETS Board of Trustees, who is attending his first meeting of the YU Board of Trustees.

Mr. Beren then called upon Mr. Bravmann for the Investment Committee report. Mr. Bravmann made reference to a performance summary sheet including asset allocations as of December 31, 2000 which he briefly updated. As at January 31, 2001, the market value of our endowment fund was \$862.1 million. This compares favorably to the \$777 million market value one year earlier. The \$85.1 million endowment increase consists of \$19.3 million in new gifts and \$65.8 million in realized and unrealized appreciation.

During the calendar year 2000, despite difficult market conditions our total assets under management earned 11.6%, net of all fees. We manage most fixed income assets internally with other investments managed externally. In 2000 our external managers earned an impressive 13.6% net of fees total return and our internally managed fixed income assets earned an equally impressive 8.4% for a weighted average of 11.6% compared to a negative 9.1 % for the S&P 500 index and a negative 4.7 % for the Dow Jones Industrial Average.

These figures are subject to year-end audit adjustments and include unrealized returns.

Mr. Mack asked Dr. Socol about the University's investment portfolio. Dr. Socol said that it had very limited exposure to high tech equities. He said its allocation was 37.91% in fixed income investments and 61.50% in equities, hedge funds and alternative investments.

The Chairman then called upon Mr. Mack for the Government Relations Committee Report. Mr. Mack said that it is important to have a presence in Washington to avail ourselves of

Federal Grants. He said that President Lamm had convened a meeting of Messrs. Resnick, Mack and Eric Javits, who considered several representatives who could represent the University's interests in Washington. Two were decided upon, one to cover the House and the second for the Senate. They will be seeking programmatic grants. For AECOM, funding would be sought for the magnetic resonance imaging facility and for Cardozo, for its Innocence Project. The groups selected were those of Bob Livingston at the House level and Alfonse D'Amato's firm for Senate representation.

The Chairman then called upon Dr. Socol for the Conflict of Interest report. Dr. Socol distributed the annual report of all members of all University Boards who do business with the University. The names of all such Board members are annually disclosed with the nature and the amount of business done with the University. A copy of the year 2000 Conflict of Interest Report is attached to these minutes.

Mr. Stanton recommended that people on the YU payroll who consult with companies that the University does business with should also be listed in the Conflict of Interest Statement. Dr. Socol said that those names will be included in future reports.

The Chairman then called upon Dr. Norman Lamm. Dr. Lamm, speaking about the Capital Campaign, said that we need the Board's help in reaching the goals of the campaign.

The President said that when the Executive Committee had authorized the Dormitory Authority borrowing, it did so conscious of the importance of prudence in incurring debt.

Dr. Lamm said that achieving diversity in staffing and enrollment sometimes creates concerns as does providing educational opportunities for the disabled. He said there are both moral and statutory considerations that must be taken into account. In addition, both are driven by accrediting agencies and applicable law. He recommended the appointment of a committee to

establish a University-wide policy for dealing with such issues.

Dr. Lamm then presented the following recommendations for recipients of Honorary Degrees: Richard C. Holbrooke, Rabbi Ephraim Buchwald, Arthur Cohn and Eli Zborowski. A discussion followed concerning the recommendations. Thereafter a motion to approve the recommendations was seconded and unanimously adopted.

Dr. Lamm then recalled for the Board a conversation he had had with his revered predecessor, Dr. Samuel Belkin, 25 years ago, after Dr. Belkin had retired. Dr. Lamm described how Dr. Belkin had told him of the rigors of the Presidency and what Dr. Lamm could expect, including the unexpected. Dr. Lamm said that the past 25 years have been the most invigorating of his life.

With that background, Dr. Lamm said, he now officially informs the Board that he will leave the Presidency of Yeshiva University and of RIETS in August 2002, in sixteen months. He said that he hoped that a successor could be found within that time but that he would, of course, stay on until that was accomplished.

Following Dr. Lamm's remarks Mr. Beren referred to Dr. Lamm as "our distinguished President and brilliant Rosh Hayeshiva." He said that his initial reaction to Dr. Lamm's news was one of sadness but that was tempered by the contemplation of so much achievement. Dr. Lamm's career covers over 60 years. Mr. Beren said that we are grateful that Dr. Lamm has pledged his continuing involvement with the University. He said that he would, later this evening, address the President's specific, enormous accomplishments. Mr. Beren said that Dr. Lamm is the recognized world leader of modern orthodoxy who responded to the challenges of his office with dignity and intelligence. Morry Weiss took the floor on behalf of Mr. Gottesman, who was absent, and reiterated Mr. Beren's sentiments and remarks. He said that Dr. Lamm's tenure has

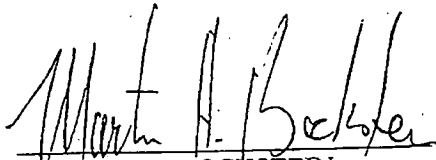
been a fabulous period for the University due to his presence.

In recognition of Dr. Lamm's enormous accomplishments, a motion was made that Yeshiva University establish the position of Chancellor and that it be assumed by Dr. Lamm on the final day of his presidency. The motion was unanimously carried.

The Chairman then recognized, in turn, the following Board members, each of whom expressed their appreciation to Dr. Lamm for his abilities and accomplishments: Messrs. Yagoda, Berman, Feinerman, Scharf, Belz, Davis, Ms. Ivry and Drs. Goldman and Kukin.

Following the remarks, Dr. Lamm briefly took the floor again to thank all those who spoke so warmly in tribute to him. Dr. Lamm then presented the tenure recommendations that had been approved by the Executive Committee. The proposal was to award tenure to Nancy Carrasco, M.D. Thierry LeJemtel, M.D., Steven Schwartz, M.D. and Mark Chance, Ph.D. The candidates' CV's were previously distributed to the Board members. Following a discussion, the Board unanimously voted to award tenure to the candidates conditioned upon tenure recommendations being approved for them by the Board of Overseers of the Albert Einstein College of Medicine when it next meets.

Mr. Beren then said that he will announce a search committee for Dr. Lamm's successor in the near future. The meeting was then adjourned to be followed by a dinner at the Schottenstein Residence Hall in honor of Dr. Lamm.

  
MARTIN H. BOCKSTEIN

**2000 CONFLICT OF INTEREST REPORT  
TO THE BOARD OF TRUSTEES  
MARCH 2001**

During the 2000 calendar year, the University "did business" with the following firms and companies in which one or more members of the Board had or have a financial interest. In each instance the business relationship was based upon a proven track record, the reputation of the firm or individuals involved, demonstrated experience and competence, and/or the result of competitive bids.

When applicable, such as the selection of investment managers, where the Board Investment Committee made and approved the decisions the appropriate Board committee was involved. In all cases, the fees charged were equal to and in many instances less than the industry standard.

**Philip Altheim**

Vice Chairman, Board of Overseers

Forest Electric Corp. installed two (2) 1500 KVA replacement transformers at 2495 Amsterdam Avenue. The total payment was \$275,000.

**Leon Black**

Member, Cardozo Board

\$45.0 million University investment committed for management to the Apollo Investment Funds. \$24.5 million book value, \$30.2 million market value as of December 31, 2000 was under management in 2000. resulting in a management fee of \$400,400.

**Judah Feinerman**

Member, Board of Trustees  
Member, RIETS Board

Judd Associates/ C.S.I.R. Inc. Enterprises  
Insurance broker. Total policy premiums  
\$366,000.

**Elliot Feinerman**

Member, Yeshiva College Board



**Samuel H. Lindenbaum**

Honorary Member, Board of  
Overseers

Rosenman & Colin.

Represents the Institution in an estate  
administration proceeding. Total fee paid in 2000  
was \$134,179.

**J. Ezra Merkin**

Member, RIETS Board  
Chairman, Board of Trustees  
Investment Committee

General or Managing Partner or Chairman or Co-  
Manager of four (4) of the 32 investments  
classified by the Investment Committee as hedge  
funds, hedge investments or non-readily  
marketable investments.

**Total University Funds Managed**  
**(Market Value at December 31, 2000)**

Blackacre	15.7	Million Dollars
Long Horizon	26.1	Million Dollars
ABLECO	10.0	Million Dollars
Ascot Partners	<u>61.6</u>	<u>Million Dollars</u>
	113.4	Million Dollars

Management fees paid in 2000 totaled \$1,090,000  
including \$593,000 paid for funds in Ascot Partners  
which are essentially managed by Bernard Madoff,  
a member of the Board of Trustees. Incentive fees  
based upon 2000 performance totaled an  
additional \$537,824.

Each fund identified generated each year, to date,  
a net profit for the University and the University has  
never experienced a loss on these investments.

It should also be noted that one of Mr. Merkin's Co-  
Managers on the ABLECO and Blackacre funds is  
the General Manager of Cerberus which manages  
6.4 million dollars of University funds.

**Ira M. Millstein**

Vice Chairman, Board of Overseers

**Marvin E. Jacob**

Member, RIETS Board

**J. Philip Rosen**

Vice Chairman, Yeshiva College  
Board

**A. Richard Parkoff**

Member, Yeshiva College Board

90  
Israel  
Hell Tel Aviv

Partners Weil Gotshal & Manges LLP  
Represent the University in regard to many  
matters. Ira Millstein has never charged the  
University for the considerable personal time he  
devotes to University issues. Total fees paid to the  
firm was \$670,905 in 2000 primarily for real estate  
matters, but includes other matters and litigation.  
In addition, The Midtown Centre LLC, a limited  
liability company established to purchase and  
operate property at 205/215 Lexington Avenue  
paid legal fees of \$529,436 during 2000.

Total rental payments of \$~~87,748~~ were made in  
2000 to The Parkoff Organization as rental  
payments for apartments used by students in  
seven (7) Washington Heights buildings in  
which The Parkoff Organization has a financial  
interest. In prior years mortgage financing was  
provided by the University to acquire these  
buildings under favorable terms in consideration of  
benefits granted to the University such as assuring  
access to all vacant apartments. The mortgage on  
several of these buildings is not at this time  
current, however, due to inadequate cash flow.

**Howard J. Rubenstein**

Member, Board of Overseers

Howard J. Rubenstein Associates.  
Firm retained annually to assist the Institution with  
special public relations problems and projects.  
Total annual payment \$86,323 in 2000.

**Charles A. Krasne**

Member, Board of Overseers

Krasdale Foods, Inc.  
Total paid to the company was \$47,874 in 2000 for  
University cafeteria food purchases.

**John D. Cohen**

Member, Board of Overseers

Blank Rome Tenzer Greenblatt

Total fees paid to the firm was \$41,801.25 in 2000 primarily for real estate matters, but includes other matters and litigation.

**Emanuel J. Adler**

Member, Yeshiva College Board

**Dr. Michael A. Stocker**

Member, Board of Overseers

Empire Blue Cross / Blue Shield  
\$12,792,213

**Stephen J. Schulte**

Member, Cardozo Board

Schulte Roth & Zabel

Total fees paid to the firm was \$1,433 in 2000 related to a former employee labor matter.

**Robert I. Kantowitz**

Member, Yeshiva College Board

Chase Securities, Inc.

The University utilizes this organization to sell various bonds received from gifts and estates.

**Alan M. Silberstein**

Member, Sy Syms Board

Western Union Financial Services

\$1,868 was paid to this company in 2000 for various mailing services.

**Moses Marx**

Member, RIETS Board

The Berkshire Bank

In 2000 the University used Madison Merchant Services, a subsidiary of The Berkshire Bank, to process its MasterCard and VISA payment transactions. Approximately \$16.0 million of transactions were processed, generating \$351,000 in fees.

AGENDA

YESHIVA UNIVERSITY

BOARD OF TRUSTEES MEETING

TUESDAY - MARCH 12, 2002

MID-TOWN CAMPUS

GOTTESMAN BOARD ROOM

7<sup>TH</sup> FLOOR

4:00 P.M.

Robert M. Beren - Presiding

- |      |   |                        |
|------|---|------------------------|
| I.   | Welcome                                     | Chairman               |
|      | Approval of Minutes - November 27, 2001     |                        |
| II.  | President's Report                          | Dr. Norman Lamm        |
|      | Including appointments of                   |                        |
|      | Dr. David Schnall and Dr. Charles Snow      |                        |
| III. | Committee Reports                           |                        |
|      | a. Capital Campaign Committee               | Ronald P. Stanton      |
|      | b. Gift Acceptance Committee                | Daniel T. Forman       |
|      | c. Investment Committee                     | Chairman               |
|      | d. Academic Affairs Committee               | Ludwig Bravmann        |
|      | e. Presidential Search Committee            | Dr. Ira Kukin          |
|      | f. Finance Committee                        | Michael Jesselson      |
|      | g. Nominating Committee - Board of Trustees | Burton P. Resnick      |
|      | h. By-Laws Committee                        | Ludwig Bravmann        |
|      |   | Martin Bockstein, Esq. |
| IV.  | Report on Legal Affairs                     | Dr. Sheldon E. Socol   |
|      |   | Martin Bockstein, Esq. |
| V.   | Annual Report on Conflict of Interest       | Dr. Sheldon E. Socol   |
| VI.  | Discussion                                  |                        |
|      | - Albert Einstein College of Medicine       |                        |
|      | - Benjamin N. Cardozo School of Law         |                        |

**2001 CONFLICT OF INTEREST REPORT  
TO THE BOARD OF TRUSTEES  
MARCH 2002**

During the 2001 calendar year, the University "did business" with the following firms and companies in which one or more members of the Board or members of Board Committees are either employed by or had / or have a financial interest. In each instance the business relationship was based upon a proven track record, the reputation of the firm or individuals involved, demonstrated experience and competence, and/or the result of competitive bids.

Where investment managers are committee members, the Board Investment Committee approved the allocation of funds for management. In all cases, the fees charged were not more than the industry standard.

While not a condition of the business relationship often the Board member is a substantial donor to the University.

**Hyman Arbesfeld**

*Member, RIETS Board*

*Hotel Bedford*

*San Carlos Hotel*

The Hotel Bedford was paid \$64,712 in 2001 and \$64,666 in 2000.

In 2001 \$485 was paid to the San Carlos Hotel, \$4,802 was paid in 2000.

**Leon Black**

*Member, Cardozo Board*

*Apollo Investment Funds*

\$45.0 million investment committed for management to the Apollo Investment Funds of which \$29.2 million of book value, \$32.7 million of market value was under management in 2001 resulting in a management fee of \$474,900.

**John D. Cohen**

*Member, Board of Overseers*

**Emanuel J. Adler**

*Member, Yeshiva College Board*

*Blank Rome Tenzer Greenblatt LLP*

Total fees paid to the firm was \$27,060 in 2001 primarily for real estate matters, but includes other matters and litigation.

David Eshaghian

Member, Board of Trustees

On June 30, 2000, Mr. Eshaghian purchased from the University a condominium unit at 215 Lexington Avenue and the entire building at 205 Lexington Avenue for \$29.25 million. The University and Mr. Eshaghian share management of the common elements of the 215 Lexington Avenue condominium with a common operating budget of some \$1.0 million.

David Feinerman

Member, Board of Trustees

Member, RIETS Board

David Associates/ C.S.I.R. Inc. Enterprises

Insurance broker. Total policy premiums \$234,406.

Elliot Feinerman

Member, Yeshiva College Board

Howard Jonas

Member, Yeshiva College Board

Internet Services Inc.

The University paid \$3,388 in 2001.

Robert I. Kantowitz

Member, Yeshiva College Board

Chase Securities, Inc.

The University utilizes this organization to sell various securities received as gifts or from estates. Total fees paid in 2001 was de minimus.

Charles A. Krasne

Member, Board of Overseers

Waldale Foods, Inc.

Total paid to the company was \$38,276 in 2001 for University cafeteria food purchases.

Medda Leff

Member, Wurzweiler Board

Lincoln Electric Products Company

Total business with this company in 2001 was almost \$60,000.

**Moses Marx**

Member, RIETS Board

The Berkshire Bank

In 2001 the University used Madison Merchant Services, a subsidiary of The Berkshire Bank, to process its MasterCard and VISA payment transactions. Approximately \$7.5 million of transactions were processed, generating \$158,000 in fees to Madison Merchant Services.

**J. Ezra Merkin**

Member, RIETS Board

Chairman, Board of Trustees

Investment Committee

General or Managing Partner of the following four (4) investments of the thirty-nine (39) such investments classified by the Investment Committee as hedge funds, hedge investments or non-readily marketable investments.

Market Value at December 31, 2001			Management Fee	High Water Mark	Incentive Fee
Blackacre	\$16.5	Million	1%	Yes	20%
Long Horizon	\$29.2	Million	1%	Yes	20% (in excess of 10%)
ABLECO	\$10.9	Million	1%	No	20%
Ascot Partners	\$69.3	Million	1%	No	None
	\$125.9	Million			

The 39 investments had a market value of \$634.5 million with the four (4) Merkin managed funds representing some 19.84% of this type of investment. The total funds under management as at December 31 was \$1.3 billion. Each Merkin managed fund generated each year, to date, a net profit for the University.

Management and incentive fees paid in 2001 totaled \$1,680,786 including \$663,000 paid for funds in Ascot Partners which is managed by Bernard Madoff Investment Securities in accordance with an arrangement made directly with Ascot Partners. Mr. Bernard Madoff is a Member, Board of Trustees and Chairman, Sy Syms Board of Directors.

It should also be noted that Steve Fineberg, one of Mr. Merkin's Co-Managers on the ABLECO, Blackacre and Long Horizon funds is the General Manager of Cerberus which manages \$7.2 million of University funds and received \$224,949 as management and incentive fees in 2001.

Ira M. Millstein  
Vice Chairman,  
Board of Overseers

Marvin E. Jacob  
Member, RIETS Board

J. Philip Rosen  
Vice Chairman, Yeshiva College Board

Weil Gotshal & Manges LLP

A law firm representing the University in regard to many matters. Ira Millstein, who has retired from the management of the firm, has never charged the University for the considerable personal time he devotes to University issues. Total fees paid to the firm was \$237,582 in 2001 primarily for real estate matters, but includes other matters and litigation.

A. Richard Parkoff

Member, Yeshiva College Board

The Parkoff Organization

Total rental payments of \$936,299 were made in 2001 to The Parkoff Organization as rental payments for fifty-seven (57) apartments used by or held vacant for the University in seven (7) Washington Heights buildings in which The Parkoff Organization has a financial interest.

In prior years, mortgage financing and investments were provided by the University to acquire ten (10) buildings under favorable terms in consideration of benefits granted to the University such as assuring access to all vacant apartments. The mortgage on several of these buildings is not at this time current, however, due to inadequate cash flow. As of June 30, 2001, there are outstanding mortgages and investments in nine (9) buildings totaling \$4,415,000. The interest in arrears is \$1,821,000.

Howard J. Rubenstein

Member, Board of Overseers

Howard J. Rubenstein Associates

Firm retained annually to assist the Institution with special public relations problems and projects. Total annual payment \$82,753 in 2001.

Stephen J. Schulte

Member, Cardozo Board

Schulte Roth & Zabel

Total fees paid to the firm was \$972 in 2001 related to a former employee labor matter.



**Stephen Siegel**

*Member, Cardozo Board*

*Insignia/E.S.G. Real Estate*

In 2001, \$16,959 was paid for real estate related services for 205/215 Lexington Avenue and for year 2000, \$730,000 was paid for real estate commissions in connection with real estate transactions.

**Dr. Michael A. Stocker**

*Member, Board of Overseers*

CEO of Empire Blue Cross / Blue Shield which provides basic health insurance for members of the University, faculty, staff and student body. Total premium remitted was \$11,694,060.

Minutes of a regular meeting of the Board of Trustees of Yeshiva University held pursuant to notice at the Midtown Campus, Gottesman Board Room, 245 Lexington Avenue, New York, New York at 4:00 p.m. on Tuesday, March 12, 2002.

Present: Robert M. Beren, Chairman

Jack Belz*	Dr. Ira Kukin
Julius Berman	Dr. Norman Lamm
Marvin S. Bienenfeld	Earle I. Mack
Marjorie Diener Blenden	Burton P. Resnick
Ludwig Bravmann	David I. Schachne
David Eshaghian	Irwin Shapiro
Judd Feinerman	Ronald P. Stanton
Dr. Felix L. Glaubach	Moshael Straus, Esq.
Alan E. Goldberg	Sy Syms
David S. Gottesman	Morry Weiss
Michael Jesselson	Joseph Wilf
Mordecai D. Katz	David Yagoda

\* By telephone

Also present:

Martin H. Bockstein, Esq.  
General Counsel

Dr. Herbert Dobrinsky  
Vice President for University Affairs

Daniel T. Forman  
Vice President for Development

Dr. Morton Lowengrub  
Vice President for Academic Affairs

Dr. Sheldon E. Socol  
Vice President for Business Affairs  
and Secretary

The Chairman called the meeting to order and called for approval of the minutes of the meeting of November 27, 2001, which on motion duly made and seconded were approved.

The Chairman then called upon Dr. Norman Lamm for the President's Report. Dr. Lamm thanked Joseph Wilf for his extremely generous gift naming the uptown campus. His report was greeted with applause.

The President said that the Rabbinate in Israel has asked for a day of prayer and fasting in the United States. It would be known as a "little Yom Kippur." Dr. Lamm said that the Israel situation is causing an institutional problem for YU. We do not know how many students will be returning to Israel after the break. It may create a residence hall problem.

The President said that the Jerusalem College of Technology may not be able to continue as our tenant in Israel. In that event, a new tenant or other source of income would have to be identified.

The President said that there have been three acceptances of the offer of honorary degrees: Dr. Bernadine Healy, Michael Jesselson and Mrs. Limor Livnat. They will be honored at the YU graduation.

Dr. Lamm proposed for additional honorary degrees Malcolm Hoenlein and Richard Joel. The nominees for honorary degrees were unanimously approved.

The Chairman then called upon Michael Jesselson for a report of the Presidential Search Committee. Mr. Jesselson said that the Committee has been operating for a few months with a very short list of candidates. Dr. Zakheim recently met with several Board members and indicated that he does not want to be considered for the Presidency. Mr. Jesselson noted that no offer had been made to him.

Dr. Lamm asked the Board to approve the appointment of 2 new Deans: J. Charles Snow of the Sy Syms School of Business and David J. Schnall as the Dean of the Azrieli Graduate School of Jewish Education and Administration.

Thereafter the Board unanimously approved the appointment of the 2 Deans.

The Chair then called upon Mr. Resnick for a report of the Finance Committee. A copy of the report is attached to these minutes.

The Chair then called upon Earle Mack. Mr. Mack said that he would like to re-open discussions regarding Cardozo Law School finances in relation to the renovation project and would like to meet with the Finance Committee to insure that we can complete the renovations of the Law School building in a timely manner. He asked that construction continue until the meeting takes place.

Mr. Mack noted that the Law School would produce a "profit" after certain expenses are satisfied including debt service on the \$30 million bond issue. Mr. Resnick said that as soon as Mr. Mack was ready the Finance Committee would meet with him and other representatives of the Law School. Mr. Beren said that in view of that, action should be deferred on Mr. Mack's request that the construction at the Law School be continued until the meeting with the Finance Committee.

The Chair then called upon Mr. Stanton, who together with Dan Forman gave the Capital Campaign Report. The Report is summarized in the material included in the booklet distributed to all Board members. Mr. Forman, utilizing slides, expanded on those remarks, showing among other things, the source of the funds received so far and of the pledges.

The Chair then called on Mr. Bravmann for the report of the Investment Committee. A copy of that report is attached to these minutes.

Mr. Bravmann's report was supplemented by Dr. Socol who distributed additional charts and spoke with the aid of slides. He said that the closing market value of the endowment fund at December 31, 2001 was \$920.8 million. For the year ending on that day there was a net of fees total return of 3.7% which compares favorably with the applicable benchmarks.

Reference was made to an Executive Summary of Cambridge Associates which indicated that YU's endowment fund has performed the third best of 134 surveyed institutions for the fiscal year ended June 30, 2001. Dr. Socol thanked the Investment Committee for its diligent service.

Mr. Beren said that we are pleased with the performance on a comparative basis.

Mr. Bravmann then moved the membership on the Board of Fanya Gottesfeld-Heller whose nomination had been considered at the previous meeting of the Board and deferred to this meeting in accordance with the By-Laws. The Board unanimously approved her membership on the Board.

Mr. Bravmann also nominated J. Ezra Merkin for membership on the Board. Mr. Merkin had previously been recommended by vote of the Executive Committee. His nomination was unanimously approved and will be deferred for final action until the next succeeding meeting of the Board.

The Board then considered 2 proposed amendments to the By-Laws which had been approved at the previous meeting. The amendments relate to the creation of an Investment Committee as a Standing Committee of the Board of Trustees and the creation of the Office of

Chancellor. On motion duly made and seconded both amendments were unanimously approved and will now become part of the By-Laws.

Mr. Bravmann then proposed an amendment to the By-Laws which would eliminate deferral to a succeeding meeting of final approval of candidates for Board membership. A discussion followed. Mr. Syms asked why we are fixing something that isn't broken and pointed out that all the current members had successfully been through the existing process. Following further discussion a motion to adopt the amendment was made, seconded and approved. It will be considered at the next meeting of the Board in accordance with the By-Laws.

The Chair then called upon Dr. Kukin for the Report of the Academic Affairs Committee. Dr. Kukin said that Dr. Lowengrub had reported on academic initiatives, external departmental reviews, new faculty hires and the mentoring program being conducted by Dr. Margaret Gibelman.

Dean Gelman provided an update on the upcoming Middle States Association visit. Dr. Rosovsky reported on his review of the undergraduate colleges that had been done in 1999 at the request of Dr. Lamm and Mr. Gottesman.

A suggestion was made that the Academic Affairs Committee meet with the Middle States evaluators during their visit on March 17 - 20, 2002.

Mr. Beren then gave a report on the Gift Acceptance Committee and called attention to the guidelines of the Committee contained in the booklet distributed to members. He said that the Committee had recently acted on 3 bequests. Included are funds already received and to be received as follows: \$7 million from the Estate of Peter Benenfeld, \$10 million from the Estate of Joseph Emanuel and the magnificent bequest from the Estate of Anne Scheiber that has now

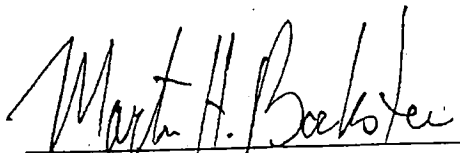
grown to approximately \$40 million. Mr. Beren said that the Committee carried out the intent of the benefactors.

Mr. Bockstein and Dr. Socol then reported to the Board on pending litigation, describing the status of the Estates of Herling and Gabriel Levine. Mr. Beren reported on the pending litigation involving the Harry Beren Trust D in which Yeshiva University is one of 9 charities named as preferred beneficiaries.

Dr. Socol then gave the Annual Conflict of Interest Report with supporting data previously distributed to the Board. He noted that the Board's policy requires full disclosure of the nature and extent of any business done between members of the various Boards of the University and the University. A list with details of such transactions had been distributed. Dr. Socol noted that most of such business is done on a competitive bidding basis and that the University usually receives preferential treatment, to its benefit. Mr. Beren questioned the Board on whether it had any objections to any of the transactions. No member expressed any opposition.

Dr. Socol then reported on the Prudential demutualization. He said that YU pension participants have approximately \$800 million invested with Prudential constituting the assets of its basic pension plan. The University has engaged Buck Associates to consult and advise on the most equitable way to distribute the approximately \$307 million that Prudential will distribute to the University for the benefit of the 6000 possible distributees. The report is expected to be received shortly.

The meeting was then adjourned.

  
MARTIN H. BOCKSTEIN

# **REPLY EXHIBIT**

## **15**



YESHIVA UNIVERSITY  
BOARD OF TRUSTEES  
INVESTMENT COMMITTEE

MR. GEDALE HOROWITZ, CHAIRMAN

December 21, 1992

MINUTES

A meeting of the Board of Trustees Investment Committee was held in the offices of Mr. David Gottesman at 4:00 p.m. on Monday afternoon, December 21, 1992.

Present: Mr. Robert Beren, Mr. Ludwig Bravmann, Mr. David Gottesman, Mr. Gedale Horowitz, Ms. Billi Ivry, Mr. J. Ezra Merkin, Dr. Sheldon E. Socol and Ms. Abigail Mason of Cambridge Associates.

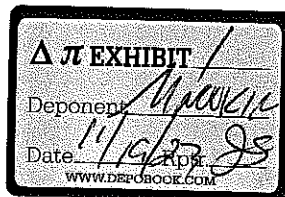
1. The investment performance as at November 30 was reviewed for each of the fund managers:

• OPPENHEIMER

The Committee expressed the opinion that Oppenheimer's 1992 performance was "very good". Questions were raised, however, concerning their reporting format and Dr. Socol was asked to reconcile with University records their data concerning opening fund balances and the amount of withdrawals. Dr. Socol was also asked to report at the next meeting concerning the policies and procedures applicable to "income" received by the University each year from the various fund managers.

• NEUBERGER AND BERMAN

The Committee expressed its satisfaction of the performance of Neuberger and Berman. To assure



performance reporting consistency of all the fund managers, Dr. Socol said that he would undertake, with the help of Cambridge Associates, to develop a more meaningful reporting format.

• **EUROPACIFIC GROWTH FUND**

While it is somewhat premature to evaluate the performance of the funds invested in the EuroPacific Growth Fund, the value of the fund did decline by approximately 2% over the previous 30 days, which today is, in view of the relatively depressed condition of the foreign markets, to be expected with global investment funds. It was decided to invite a representative of EuroPacific to attend the next meeting of the Committee.

• **MILLER, ANDERSON & SHERRARD**

The management by Miller, Anderson & Sherrard of 30 million dollars was undertaken only within the last 30 days, no comments could, therefore, be made concerning their performance. On balance, it was noted that, to date, they appear to be investing the funds aggressively. It was pointed out, however, that while some of the investments held by MAS appear to be high coupon, high quality, others are very clearly not investment grade. It also appears that they had purchased a substantial amount of what could be called "junk" bonds and that they, at least, as of the November 30 reporting date appear to have a high cash position. Many questions were raised,

however, concerning their reporting format and the definitions they use to refer to "yield to maturity" and "current yield". The reporting format also did not provide crucial information such as the average life of the portfolio, the duration of maturities, and the yield to maturity based upon purchase cost.

The investment guidelines with Miller, Anderson & Sherrard were reviewed by the Committee and it was suggested that the guidelines be modified to provide that investments should not be made in less than double "BB" obligations. These issues will be discussed with MAS by Cambridge Associates and a complete report will be prepared for the next meeting.

2. Dr. Socol presented a schedule identifying the assets managed by the various fund managers, which indicated that in the aggregate some 36% is now invested in equities under the assumption that the 100% equity managers have indeed invested all the assets that they manage in equities.

The non-supervised assets were identified and briefly described.

It is the objective of the Committee that ultimately all the endowed assets of the Institution should be managed under the oversight and guidelines set by of the Investment Committee and that over time those that today are being managed consistent with certain donor preferences, should be consolidated as part of the investment pool to the degree it

is practical to do so.

3. Dr. Socol referred to the Minutes of the December 1st meeting and said that the Committee had previously decided that after the national presidential election, subject to market conditions, an additional 30 million dollars is to be deposited for management with Miller, Anderson & Sherrerd. In view of economic conditions and the questions raised concerning their reporting format and the "quality" of the investments being made, it was decided to defer the implementation until the questions raised can be satisfactorily answered.
4. Dr. Socol pointed out to the Committee that they had indicated a desire to move toward an equity asset allocation of approximately 50% and that since some 36% was now invested in equities 14% additional percent of the market value of the endowment fund can now be invested in the equity market. The Committee expressed its view that it should proceed toward a 50% equity position on a long term basis but should do so with great caution.

The Committee agreed that on a long term basis the equity market consistently outperforms the fixed income market, yet the time horizon to measure equity performance should be five years or greater.

A lengthy discussion followed concerning various investment strategies. Ms. Mason reviewed her report concerning prospective "hedge fund" managers for the Committee and

pointed out the various definitions and structures under the general category of hedge funds which include varying investment styles and strategies, as well as the concerns inherent in the use of such strategies.

The Committee confirmed its prior decision not to invest funds with any individual or firm which is under any investigation "cloud", which eliminated certain possible managers. Many names, as possible investment managers, were suggested by members of the Committee and varying investment styles and approaches were discussed in considerable detail.

Ms. Ivory raised, once again, for consideration, the possible investment in mutual funds such as the Putnam Fund. Discussion followed, and it was decided to review this matter again in the future, pointing out the advantages and disadvantages of mutual funds as compared to the other investment opportunities under consideration.

5. Mr. Ezra Merkin, in response to the request made of him to do so during the December 1 meeting of the Committee, presented his report and analysis concerning various investment strategies and potential managers for each strategy. Consistent with the Committee's earlier decision, a plan was discussed for 25 million dollars to be so invested to be divided among six or seven managers in amounts ranging from 2.5 million dollars to 5.0 million dollars.

Mr. Merkin pointed out that the objective is to increase

return at the lowest possible risk and that on a risk adjusted basis, especially in a downward or meandering market, the type of management suggested should do better than the more traditional investment opportunities. The Committee expressed its awareness of the fact that the investment approach being considered requires the recognition of certain realities. Rather than the receipt of trade notices, the University will, in their place, receive quarterly letters and reports that are often unaudited. In certain instances the University may from time to time, therefore engage an independent audit of its investment. Liquidity varies with the investment opportunity, and prior notice is required and the timing of that notice is important to assure a prompt return of principal. While communication with the fund managers of the type under discussion is certainly possible, it is not as easily achieved as with typical fund managers and the information obtained may to the unsophisticated be a source of some discomfort. The members of the Committee understood full well the characteristics of the type of investments under discussion and the names of those suggested were well known to them as was their business and professional reputation. Ms. Mason and Dr. Socol pointed out that investment in certain types of Limited Partnerships may give rise to Unrelated Business Taxable Income (UBTI).

Mr. Gottesman pointed out that it was important to select managers and investment opportunities that have proven in the past that they could stay the course since in today's highly

valued market, "When you fill the bathtub, all the toys float and the problem begins when you pull the plug."

There was unanimous agreement, after considerable discussion and analysis, that it is in the best interest of the University to invest 25 million dollars, consistent with the plan being discussed, one that the University has sufficient endowment funds to now make it prudent to do so. It was further decided that to the degree possible, the investments should be made by December 31st since the opportunities to invest in the way proposed is limited and that the representatives of several of the desirable investment opportunities have indicated in prior conversations that only as an accommodation to the University would they be prepared to accept new "accounts" and that this offer should be accepted without delay especially since December 31 is an opportune time for such investments. It was then decided unanimously to proceed with the following investments:

A. Madoff and Company (Ascot Partners L.P.)	\$5.0 million
B. Ardsley Partners	\$5.0 million
C. J Fund	\$2.5 million
D. Kingdon Capital	\$2.5 million
E. Pequot Partner	\$2.5 million
F. Bentley Capital	\$2.5 million
G. Wellington Partners	\$2.5 million
H. Siegler-Collery	\$2.5 million
<hr/>	
Total	\$25.0 million

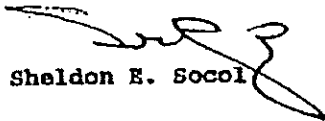
If it proves, for whatever reason, to be impractical to place any one or more of these investments at this time, the Committee agreed that the funds are to remain uninvested until the Committee meets again and makes an alternative decision.

The Committee authorized Dr. Socol with the help of Mr. Merkin to proceed to place these investments. Mr. Merkin was thanked for his valuable assistance.

The Committee decided to meet again on Monday afternoon, January 25, 1993 at 3:30 p.m. in Mr. Gottesman's office to continue its deliberations and to receive status reports concerning the implementation of prior decisions. A representative of The Euro Pacific Growth Fund will be invited to that meeting.

Meeting was adjourned at 7:25 p.m.

Minutes prepared

  
Sheldon E. Socol



YESHIVA UNIVERSITY ENDOWMENT FUND  
IN \$000'S

JANUARY 1, 1993

MANAGER	AVERAGE CAPITAL	MONTHLY CHANGE \$ %	Y-T-D CHANGE \$ %	CURRENT VALUE	PREVIOUS VALUE	%
<b>OPPORTUNISTIC TRADERS</b>						
	\$0			\$0	\$0	0%
<b>SUBTOTAL</b>	\$0			\$0	\$0	0%
<b>REPEATED HEDGING</b>						
MADOFF & CO	\$5,000			\$5,000	\$5,000	20%
<b>SUBTOTAL</b>	\$5,000			\$5,000	\$5,000	20%
<b>HERDED EQUITIES</b>						
ARDGLEY PARTNERS	\$5,000			\$5,000	\$5,000	20%
PEQUOT PARTNERS	\$2,500			\$2,500	\$2,500	10%
J FUND	\$2,500			\$2,500	\$2,500	10%
BENTLEY CAPITAL	\$2,500			\$2,500	\$2,500	10%
<b>SUBTOTAL</b>	\$12,500			\$12,500	\$12,500	50%
<b>LONG EQUITIES</b>						
SIEGLER-COLLERY	\$2,500			\$2,500	\$2,500	10%
<b>SUBTOTAL</b>	\$2,500			\$2,500	\$2,500	10%
<b>SPECIAL SITUATIONS</b>						
KINGDON PARTNERS	\$2,500			\$2,500	\$2,500	10%
WELLINGTON PARTNERS	\$2,500			\$2,500	\$2,500	10%
<b>SUBTOTAL</b>	\$5,000			\$5,000	\$5,000	20%
<b>YES OR YES IT IS</b>						
	\$0			\$0	\$0	0%
<b>SUBTOTAL</b>	\$0			\$0	\$0	0%
CASH INVESTMENTS	\$0			\$0	\$0	0%
<b>TOTAL PERFORMANCE</b>	\$25,000			\$25,000	\$25,000	100%

Confidential  
Treatment Requested

YU 0000732

YESHIVA UNIVERSITY

TO: Mr. Jack Sproule                      DATE: December 21, 1992  
Deputy Controller

FROM: Dr. Sheldon E. Socol              SUBJECT: Board of Trustees  
Vice President                      Investment Committee  
Business Affairs

Today the Board of Trustees made, among other decisions, the following investment decisions which you should act upon today:

Call:

Pequot Partners Fund L.P.                      \$2.5 million  
Mr. Arthur Sanburg  
(203) 254-0091

J. Fund    \$2.5 million  
Mr. David Driscoll or his  
secretary, Ms. Susan Lynch  
(617) 261-9800

Bentley Capital                                      \$2.5 million  
Mr. Jerry Levine  
(212) 272-9440

Advise each of them of the decision of the Investment Committee and that we want to open the account and wire the funds by December 31. Let them send the forms and information to do so right away.

You can advise that the Board Committee decision was based upon the recommendation of Mr. J. Ezra Merkin, a member of the Board. (He probably contacted them already.)

Let me know the status this afternoon.

The Minutes of the December 21 meeting will provide data concerning other investment decisions, such as the decision to invest with:

Madoff & Co.                                      \$5.0 million  
Ardsley Partners                                  \$5.0 million

Do not contact them, however, until Mr. Merkin first speaks to them.

SES:ajs  
cc: Mr. Bernard Pittinsky

Confidential  
Treatment Requested

YU 0000733

# **REPLY EXHIBIT**

## **16**

Suite 800  
100 Congress Avenue  
Austin, Texas 78701  
  
DALLAS HOUSTON AUSTIN  
LONDON WASHINGTON, D.C.

WINSTEAD  
SECHREST  
& MINICK

A Professional Corporation  
Attorneys & Counselors

(512) 474-4330  
Telecopier (512) 370-2850

Direct Dial: 512/370-2866

December 30, 1992

Mr. J. Ezra Merkin  
c/o Ascot Partners, L.P.  
450 Park Avenue  
32nd Floor  
New York, New York 10022

VIA FAX 212-838-9603  
ORIGINAL BY FEDERAL EXPRESS

Re: Mary Thomajan Investment of \$750,000  
Ascot Partners, L.P.

Dear Ezra:

By way of follow up to our conversation of yesterday and my telephone call this date to Michael in your office, I am faxing to you the following documents relevant to Mary Thomajan's investment of \$750,000 in Ascot Partners, L.P., with the originals being sent by Federal Express to your office tonight:

(1) Purchaser's Statement of Suitability executed by Mary Thomajan, and wherein she has indicated that you acted as her purchaser representative. If you deem that inappropriate in light of your role as the General Partner, please advise me; otherwise, you may wish to place in her file a Purchaser Representative Statement signed by you.

(2) Executed originals of Pages 7 and 8 of the Subscription Agreement and Power of Attorney for Ascot Partners, L.P. I would appreciate your returning to me a copy of page 8, the acknowledgment page, signed by yourself as the Managing Partner, so as to reflect the acceptance of Mary as a limited partner.

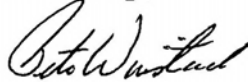
Please be advised that I have this date instructed Nations Bank in Austin, Texas to wire transfer the amount of \$750,000 to Citibank N.Y., ABA #021000089 to the account of Morgan Stanley & Company, Account #38890774, for further credit to Ascot Partners, L.P., Account #03823002. I would appreciate your office confirming receipt of these funds as soon as possible.

Mary and I look forward to working with you and Bernie Madoff as it relates to Ascot Partners, L.P. I also very much appreciate your assistance to Mary in evaluating the various investments we have been considering. I am forwarding to you copies of the letters confirming our investments of \$1,000,000 in

Mr. J. Ezra Merkin  
December 30, 1992  
Page Two

Tremont Investors and \$750,000 in The SC Fundamental Value Fund.  
I am sure we will be talking during the year, and I know you are  
particularly busy at this time of year, and Mary really needed  
the help. Thanks again for your assistance and your patience.

Sincerely,



Peter Winstead

PW

cc: Ms. Mary Thomajan

Enclosures

101:A921230X.30

1230921h1

GENL T3165-00100

# **REPLY EXHIBIT**

## **17**

## GABRIEL CAPITAL GROUP

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1992 SEP -1 PM 12: 22

450 Park Avenue  
New York, New York 10022

TELEPHONE 212 838-7200  
FACSIMILE 212 838-9603

TO: Mr. Ralph Kestenbaum  
011-4121-395-914

FROM: Michael E. Autera, Jr.

DATE: September 1, 1992

RE.: Investment in Ascot Fund Ltd/Madoff & Co.

Per your request, the wiring instructions for  
Ascot Fund Ltd. are as follows:

Chemical Bank  
New York, New York

ABA 021-000128  
CHIPS 012

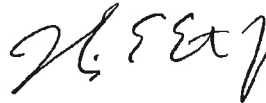
A/C: Pierson Helldring & Pierson  
544-7-07901

CR.: Ascot Fund Ltd  
238336

As I mention on the phone, your investment of  
\$500,000 (USD) will be used to purchase  
participating shares of Ascot Fund Ltd. Ascot  
is a Cayman Island corporation whose Investment  
Advisor is Ezra Merkin. Ascot's sole investment  
is a managed account at Bernard L. Madoff & Co.

Please do not hesitate to call either Ezra or  
me if additional information is needed or if  
questions arise.

Regards,



CONFIDENTIAL

GCC-P 0393132

# **REPLY EXHIBIT**

## **18**



**From:** Walter Link on behalf of wlink@bluewin.ch  
**Sent:** Thu, 06 Nov 2008 08:21:27 GMT  
**To:** Autera; Michael  
**CC:** wlink@bluewin.ch  
**Subject:** M&H Propeties LLC

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Dear Mr. Autera,  
Just in case you didn't get my e-mail address down correctly, here it is. In the future if I have questions, shall I direct myself to you or who else should I call.

For now I understand that you send me

- Month by month performance overview for 2008 and prior years
- Each month when the numbers come out an e-mail about the return for the prior month
- The redemption info. My understanding is that I need to cancel with 30 days notice for the end of the quarter
- My understanding is also that presently you are invested 100% in Madoff and that the fee is 1,5% with no further costs or deductions on the Madoff results

Thank you, Walter Link (President M&H)

**REPLY EXHIBIT**  
**19**  
**(FILED UNDER SEAL)**

**REPLY EXHIBIT**  
**20**  
**(FILED UNDER SEAL)**